

STATE OF NEW MEXICO  
TAXATION AND REVENUE DEPARTMENT

**QUARTERLY OIL AND GAS PROCEEDS WITHHOLDING TAX RETURN**

**Who Must File:** Remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico who have withheld tax from payments according to the Oil and Gas Proceeds And Pass-Through Entity Withholding Tax Act (7-3A-1) NMSA 1978) must submit to the Department the tax withheld on this form, RPD-41284, *Quarterly Oil and Gas Proceeds Withholding Tax Return*. See the instructions for important definitions. For exceptions and adjustments to the requirement to withhold, see page 2 of these instructions.

Remitters are also required to file annual information returns to the Department, and provide sufficient information to enable the remitees to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the remitee's share of the gross oil and gas proceeds. See Forms RPD-41283, *Annual Summary of Oil and Gas Proceeds Withholding Tax*, RPD-41360, *Annual Withholding of Oil and Gas Proceeds Detail*, and RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*.

**When to File:** The oil and gas proceeds withholding tax is due on or before the 25th day of the month following the close of the calendar quarter in which the oil and gas proceeds were paid. If the due date of the return falls on a Saturday, Sunday or state or national legal holiday, the return is timely if the postmark bears the date of the next business day. If no payment of oil and gas proceeds was made for a reporting period, no return is due.

**Where to File:** Mail only the bottom portion with your payment to: New Mexico Taxation and Revenue Department, P.O. Box 25123, Santa Fe, NM 87504-5123. Make the check or money order payable to the New Mexico Taxation and Revenue Department. Retain the top portion for your records. For assistance call (505) 827-0825.

<b>Remitter FEIN or SSN:</b>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN
<b>Name:</b>	
<b>Street/box:</b>	
<b>City, state, ZIP:</b>	
Check if address is outside the U.S. <input type="checkbox"/>	

**Quarterly report period:**

1. Gross oil and gas proceeds
2. Exceptions and adjustments
3. Oil and gas proceeds subject to withholding
4. Amount withheld
5. Penalty
6. Interest
7. TOTAL

	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1.		.00
2.		.00
3.		.00
4.		.00
5.		.00
6.		.00
7.		.00

▽ PLEASE CUT AND RETURN BOTTOM PORTION WITH YOUR PAYMENT ▽

**QUARTERLY OIL AND GAS PROCEEDS WITHHOLDING TAX RETURN**

<b>Remitter FEIN or SSN:</b>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN
<b>Name:</b>	
<b>Street/box:</b>	
<b>City, state, ZIP:</b>	
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	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1.		.00
2.		.00
3.		.00
4.		.00
5.		.00
6.		.00
7.		.00

Check if amended ☐

Signature \_\_\_\_\_ Date \_\_\_\_\_ E-mail address \_\_\_\_\_

Mail to: Taxation and Revenue Department, P.O. Box 25123, Santa Fe, NM 87504-5123

**OGP**

# STATE OF NEW MEXICO - TAXATION AND REVENUE DEPARTMENT

## Quarterly Oil and Gas Proceeds Withholding Tax Return Instructions

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**ABOUT THIS TAX:** Effective October 1, 2003, remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico must deduct and withhold tax from each payment of oil and gas proceeds to a nonresident of New Mexico (remittee). To calculate the withholding amount multiply the effective rate for the reporting period by the gross amount of oil and gas proceeds that otherwise would have been payable to the remittee. Effective January 1, 2011, legislation combines reporting and withholding provisions for pass-through entities with the Oil and Gas Proceeds Withholding Tax Act. The name of the act changes to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Bulletin B-100.22, *2010 Legislative Summary*, provides a summary of all changes that occurred with this legislation.

### IMPORTANT DEFINITIONS:

**"Remittee"** means a person who is entitled to payment of oil and gas proceeds by a remitter.

**"Remitter"** means a person who pays oil and gas proceeds to any remittee.

**"Oil and gas"** means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide.

For definitions of **"Oil and gas proceeds"** see "What are gross oil and gas proceeds?" on page 2 of these instructions.

**INSTRUCTIONS FOR COMPLETING THIS FORM:** Complete all information requested. Round all money amounts to the nearest whole dollar; for example; enter \$10.49 as \$10 and \$10.50 as \$11. Enter the remitter's federal employer identification number (FEIN) or social security number (SSN) and mark the box indicating the type of identification number entered. Enter a quarterly report period that is based on a calendar quarter. Enter the month, day and year of the first and last day of the reporting period in which the tax was withheld; for example, for the last quarter of 2002, enter 10-01-02 and 12-31-02. Enter the name and mailing address of the remitter of the oil and gas proceeds. If the address is located outside the United States, mark the indicator box. Check the amended box if amending a previously filed return. See the instructions below to complete lines 1 through 7. Upon completion of the form, sign, date and enter your E-mail address on the return.

**Line 1:** Enter the total gross New Mexico oil and gas proceeds paid during the report period regardless of production date.

**Line 2:** Enter the gross New Mexico oil and gas proceeds paid but not withheld because those proceeds qualified for one

of the exceptions or adjustments listed in these instructions. When an adjustment occurs, include on this line, the gross oil and gas proceeds from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from oil and gas proceeds subject to withholding in line 3. See "Adjustments to the amount withheld:" on the next page.

**Line 3:** Subtract line 2 from line 1, and enter the amount on line 3. This is the oil and gas proceeds subject to withholding.

**Line 4:** Enter the amount of tax withheld from the oil and gas proceeds reported on line 3. Calculate withholding by multiplying the gross amount of oil and gas proceeds subject to withholding (line 3) by 0.049 or the current rate according to the Oil and Gas Proceeds Withholding Tax Rate Table below. The rate of withholding is set by Department directive; but may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the tax year or set by Section 7-2A-5 NMSA 1978 for the tax year, and provided that remitters are given ninety days' notice of a change in the rate.

**Line 5:** Penalty. Add penalty if the entity fails to file timely or to pay the amount on line 4 when due. Calculate the penalty by multiplying the unpaid amount on line 4 by 2%, then by the number of months or partial months for which the return or payment is late, not to exceed 20% of the tax due. The penalty may not be less than \$5.00.

**Line 6:** Interest. Interest accrues daily on the unpaid principal of tax due, and can change on a quarterly basis. The effective annual and daily interest rates are posted on the Department's web page at [www.tax.newmexico.gov](http://www.tax.newmexico.gov) or can be obtained by contacting the Department.

**Line 7:** Add lines 4, 5 and 6.

If requesting a refund of oil and gas proceeds withholding tax paid due to an overpayment of tax withheld, complete Form RPD-41071, *Application for Tax Refund*, and submit an amended Form RPD-41284, *Quarterly Oil and Gas Withholding Tax Return*, for the report period in which you over-reported the withholding tax withheld. Be sure to check the amended return indicator to ensure proper processing of your amended return.

### What are gross oil and gas proceeds?

"Oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds

**Oil and Gas Proceeds Withholding Tax Rate Table**

If your report period falls between:			the effective rate is:
Oct 1, 2003	and	Dec 31, 2004.....	6.75%
Jan 1, 2005	and	Dec 31, 2005 .....	5.70%
Jan 1, 2006	and	Dec 31, 2006 .....	5.30%
Jan 1, 2007	and	Dec 31, 2007 .....	5.30%
Jan 1, 2008	and	Thereafter .....	4.90%

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received from the sale of oil and gas production or in the cash value of that production. Oil and gas proceeds excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable.

"Gross oil and gas proceeds" means the amount of oil and gas proceeds subject to oil and gas proceeds withholding tax and includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-Misc in box 2, royalties, and in box 7 non-employee compensation.

**The following payments are not subject to the oil and gas proceeds withholding tax:**

- "net profits interest" and other types of interest which cannot be linked to a specified share of the oil and gas production.
- advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments, provided that the payments are not offset against a share of future production.

**The well must be located in New Mexico**, but if the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

**Adjustments to the amount withheld:** If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the remitter may take credit for that amount in determining the amount the remitter must withhold and deduct. When an adjustment occurs, include on line 2, the gross oil and gas proceeds from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from oil and gas proceeds subject to withholding in line 3.

**Exceptions to the requirement to withhold.**

1. If the amount to be withheld from the payment is less than ten dollars or if the sum of all payments made to that remittee by the remitter, including the subject payment, in the calendar quarter is thirty dollars or less.
2. At the option of a remitter, a remitter may agree with the remittee that the remittee pay the amount that the remitter would have been required to withhold and remit to the department on behalf of the remittee pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the remittee shall be remitted

on Form RPD-41357, *Oil and Gas Proceeds Remittee's Quarterly Tax Payment*, and on the due date of this return. The remitter must have a completed Form RPD-41353, *Nonresident Owner's or Remittee's Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*, on file at the time it files its annual reporting requirements for the tax year to which the agreement pertains. A remitter is liable for amounts that a remittee has agreed to remit, once the department notifies the remitter that the remittee failed to remit the payment.

3. The remittee maintains its place of business or residence in New Mexico:
  - If a corporation, a signed and notarized Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the corporation's principal place of business is in New Mexico, or
  - If a corporation incorporated in New Mexico, the corporation's incorporation papers are on file, with sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address, or
  - If an individual, a signed and notarized Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the individual is a resident of New Mexico and declaring the physical location of the individual's abode in New Mexico.
4. Documentation is on file showing that the remittee is granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code, including a copy of the remittee's federal Form W-9, or a copy of the determination letter from the IRS.
5. Documentation is on file showing that the remittee is the United States, New Mexico or any agency, instrumentality or political subdivision of either.
6. Documentation is on file showing that the remittee is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof.
7. Documentation is on file showing that the remitter's payment to the remittee is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners. Acceptable proof includes --but is not limited to-- written notification from a remittee or internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners.